IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

WP(C).No. 31515 of 2007(B)

PETITIONER:

M/S.RASNA PRIVATE LTD.,
XVII/603, KAROTHUKUZHY JUNCTION,
MARKET ROAD, ALUVA, ERNAKULAM DISTRICT,
REPRESENTED BY ITS POWER OF ATTORNEY HOLDER,
M.M.ABDUL KHADER.

BY ADV. SRI.ARIKKAT VIJAYAN MENON
SRI.HARISANKAR V. MENON
SRI.MAHESH V.MENON
SMT.MEERA V.MENON

RESPONDENTS:
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1. **INTELLIGENCE OFFICER(IB),**
   DEPARTMENT OF COMMERCIAL TAXES,
   THIRUVANANTHAPURAM.

2. **DEPUTY COMMISSIONER OF COMMERCIAL**
   TAXES(APPEALS), THIRUVANANTHAPURAM.

3. **THE MANAGER,**
   IDBI BANK, M.G.ROAD,
   ERNAKULAM.

BY GOVERNMENT PLEADER SSRI. K.P.PRADEEP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/10/2007 ALONG WITH WPC NO. 31541 OF 2007 AND WPC NO. 31546 OF 2007, THE COURT ON 25/10/2007 DELIVERED THE FOLLOWING:

KSS

ANTONY DOMINIC, J.

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W.P.(C) Nos.31515, 31541 & 31546 OF 2007
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Dated this the 25th October, 2007

J U D G M E N T

In these writ petitions, the prayer sought for is to quash the orders passed by the appellate authority granting stay of recovery of penalty and interest due, on condition that the petitioners remit 50% of the penalty and interest and further directing to furnish adequate security for the balance amount.

2. The facts of the case being similar, I will refer to the facts and exhibits as stated in W.P.(C) No. 31515 of 2007.

3. In relation to the assessment years 2005-06 and 2006-07, proceedings for the imposition of penalty were initiated against the petitioner and overruling the objections raised, by Exts. P1 and P2 orders, penalty was imposed on the petitioner. These orders were challenged before the 2nd respondent by filing Exts. P6 and P7 appeals and it is considering the applications filed for stay of recovery of the amounts ordered in Exts. P1 and P2, that the appellate authority has

passed Ext. P8 order granting stay, subject to the conditions stated above.

4. The petitioner would contend that they are not liable to be penalised in any manner. According to them the soft drink concentrates were correctly assessable under Entry 84(33) of the III Schedule to the VAT Act and that 4% tax has been paid on that basis without any objection raised by the department. They would contend that the finding in Exts. P1 and P2 that 12.5% tax is leviable is incorrect. It is also contended that similar situation arose in the States of Karnataka, Andhra Pradesh and New Delhi and that the authorities of the aforesaid States have issued Exts. P3 to P5 clarifications, on the basis of which tax is levied as contended by the petitioner. They would also argue for the position that in the absence of any guilty intention to evade tax they cannot be imposed penalty.

5. Though these contentions, would prima facie, appear to be appealing, I am not called upon to decide those issues on its merits. In my view these are matters for the appellate authority to consider and

decide and this Court will not be justified in pronouncing upon these matters at least at this stage.

6. However, petitioner has certainly made out a prima facie case for an interim order and a reading of Ext. P8 would show that none of the contentions raised have been adverted to or dealt with by the appellate authority. In that view of the matter, Ext. P8 in W.P. (C) No. 31515 of 2007, calls for interference. In view of the prima facie case that has been made out by the petitioner in this case, I am of the view that the order Ext. P8 in this case requires to be modified. Accordingly I direct that Ext. P8 will stand modified directing the petitioner to pay 25% of the penalty and interest. For the same reasons Ext. P5 orders passed by the appellate authority in W.P.(C) Nos. 31541 & 31546 of 2007 will also stand modified and the petitioners will pay 25% of the penalty and interest. All the petitioners would also furnish adequate security for the balance amount of penalty, to the satisfaction of the assessing authority. Petitioners shall remit the amount and furnish security within two weeks from today.

With the above modification, the writ petitions are disposed of.

ANTONY DOMINIC
JUDGE

jan/-